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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
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13 ANTHONY L. TAYLOR,

14 Petitioner,

15 vs.

16 TERRI GONZALEZ, Warden;
ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA,

17 Respondents.

CASE NO. 11cv1109 WQH (RBB)

ORDER

18 HAYES, Judge:

19 The matter before the Court is the Report and Recommendation (ECF No. 15) of the
20 Honorable Magistrate Judge Ruben B. Brooks recommending that the Court deny Petitioner's
21 Motion for Stay and Abeyance. (ECF No. 7).

22 **BACKGROUND**

23 On May 19, 2011, Petitioner filed his Petition for Writ of Habeas Corpus pursuant to
24 28 U.S.C. § 2254 asserting claims that his due process rights were violated by his sentence and
25 that he received ineffective assistance of counsel by his trial counsel (ECF No. 1). On
26 October 31, 2011, Petitioner filed a Motion for Stay and Abeyance seeking a stay while he
27 filed and exhausted a claim of ineffective assistance of his appellate counsel in state court.
28 (ECF No. 7).

On June 28, 2012, the Honorable Magistrate Judge issued a Report and Recommendation recommending that the Court deny Petitioner's Motion for Stay and Abeyance on the grounds that: 1) the Petition is not a mixed petition containing some exhausted and some unexhausted claims and 2) the statute of limitation has run on Petitioner's unexhausted claim. (ECF No. 15).

The Magistrate Judge stated:

This Report and Recommendation will be submitted to United States District Court Judge William Q. Hayes, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Any party may file written objections with the court and serve a copy on all parties on or before July 20, 2012. The document should be captioned, "Objections to Report and Recommendation" Any reply to the objections shall be served and filed on or before August 3, 2012. The parties are advised that failure to file objections within the specified time may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

Id. at 23-24.

To date, neither party has filed objections to the Report and Recommendation.

DISCUSSION

The duties of the district court in connection with a Report and Recommendation of a Magistrate Judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1). When a party objects to a Report and Recommendation, "[a] judge of the [district] court shall make a de novo determination of those portions of the [Report and Recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). When no objections are filed, the district court need not review the Report and Recommendation de novo. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Fed. R. Civ. P. 72(b); *see also* 28 U.S.C. § 636(b)(1).

Neither party objected to the Magistrate Judge's Report and Recommendation in this case. This Court has reviewed the record and the Report and Recommendation in their entirety. The Court finds that the Magistrate Judge correctly recommended that the Motion for Stay and Abeyance be DENIED.

1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 15) is
3 adopted in its entirety. Petitioner's Motion for Stay and Abeyance (ECF No. 7) is DENIED.

4 DATED: August 23, 2012

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6 **WILLIAM Q. HAYES**
7 United States District Judge
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